

**From:** [Martini, Jay](#)  
**To:** [theresemeyer](#)  
**Cc:** [Betsy Herrmann](#); [Anna Schmidt](#)  
**Subject:** Re: Red Creek Reservoir Dam Spillway Reconstruction Project  
**Date:** Tuesday, March 25, 2014 10:59:43 AM

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Therese,

I'm sorry, I forgot to include where you can go if you need to find a complete set of migratory birds/raptor guidelines. They are available at: <http://www.fws.gov/utahfieldoffice/MigBirds.html>.

On Tue, Mar 25, 2014 at 10:36 AM, Martini, Jay <[jay\\_martini@fws.gov](mailto:jay_martini@fws.gov)> wrote:

Hi Therese

This responds to your February 20, 2014, letter regarding the Red Creek Reservoir Dam Spillway Reconstruction Project (Project). Your letter requested that the U.S. Fish and Wildlife Service, Utah Ecological Services Field Office determine if the proposed Project qualifies as a categorical exclusion with respect to greater sage-grouse, bald eagle, Colorado pikeminnow, humpback chub, bonytail, and razorback sucker.

#### Greater Sage-grouse

Your letter indicates that the Project will occur within the Utah Division of Wildlife Resources' (DWR) mapped priority habitat for greater sage-grouse (GRSG). Special consideration should be given to the GRSG, a sensitive species in the State of Utah and a Candidate for listing under the ESA. Our comments related to GRSG are provided largely in the context of the Final Greater Sage-Grouse Conservation Objectives Team Final Report (COT report). Our purpose for developing the COT report was to provide range-wide conservation objectives that, if met, would indicate that threats to the species have been reduced or ameliorated so that it is no longer in danger of extinction or likely to become so in the foreseeable future.

Based on the Project information provided, the proposed action will occur in DWR mapped priority habitat that lies within the Strawberry Sage Grouse Management Area identified in the State of Utah's Conservation Plan for Greater Sage-grouse in Utah (Plan), as well as the Strawberry Priority Area for Conservation (PAC), as identified in the COT report. The PACs are the most important areas needed for maintaining GRSG representation, redundancy, and resilience across the landscape. Your letter states that the closest known lek is approximately 6 miles from the proposed project.

The Project will occur in approximately the same location as the existing spillway, therefore we anticipate minimal additional disturbance. However indirect impacts could occur as a result of Project implementation due to noise associated with work activities. Therefore, we recommend avoiding placement of structures in GRSG habitats that would result in noise levels of more than 10 decibels above ambient conditions. The noise measurement should be applied to construction and long term operation of project facilities. To further reduce impacts to GRSG during lekking, nesting and brood rearing seasons we recommend working with DWR sage-grouse biologists to implement the Project during a time when GRSG are less vulnerable to noise impacts.

Since the Project will occur in approximately the same location as the original dam and spillway (as well as 6 miles away from the nearest known lek), we do not recommend compensatory mitigation for both direct and indirect impacts to GRSG. However should additional GRSG habitats be impacted by activities associated with Project implementation, we recommend implementation of the management and mitigation protocols found within the Conservation Plan for Greater Sage-grouse in Utah. This Plan states that agencies should follow a hierarchical protocol that includes avoidance, minimization, and mitigation for impacts to sage-grouse and their habitat. If avoidance and minimization is not possible, the Plan requires mitigation at a 4:1 ratio starting with the first acre disturbed. We recommend GRSG occupancy be a primary success criterion for mitigation.

#### Bald Eagle, Raptors and Migratory Birds

We recommend use of the Utah Field Office Guidelines for Raptor Protection from Human and Land Use Disturbances which were developed in part to provide consistent application of raptor protection measures statewide and provide full compliance with environmental laws regarding raptor protection. Raptor survey and mitigation measures are provided in the Raptor Guidelines as recommendations to ensure that proposed projects will avoid adverse impacts to raptors.

Please note that the bald eagle was removed from the federal list of endangered and threatened species. While bald eagles no longer are provided protection under the Endangered Species Act (ESA), they are still protected under the Bald and Golden Eagle Protection Act in addition to the Migratory Bird Treaty Act (MBTA).

The MBTA prohibits the take of migratory birds, their parts, nests, eggs, and nestlings. To ensure ground-disturbing activities do not result in the “take” of an active nest or migratory bird protected under the MBTA, we recommend:

- a. Any groundbreaking activities or vegetation treatments should be performed before migratory birds begin nesting or after all young have fledged to avoid take;
- b. If activities must be scheduled to start during the migratory bird breeding season, you should take appropriate steps to prevent migratory birds from establishing nests in the potential impact area. These steps could include covering equipment and structures and use of various excluders (e.g., noise). Birds can be harassed to prevent them from nesting on the site.
- c. If activities must be scheduled during the migratory bird breeding season, a site specific survey for nesting birds should be performed starting at least 2 weeks prior to vegetation treatments. Established nests with eggs or young cannot be moved, and the birds cannot be harassed (see b., above), until all young have fledged and are capable of leaving the nest site;
- d. If nesting birds are found during the survey, appropriate spatial buffers should be established around nests. Vegetation treatments within the buffer areas should be postponed until the birds have left the nest. Confirmation that all young have fledged should be made by a qualified biologist.

### Endangered Colorado River Fishes

As you are aware, water depletions from the Upper Colorado River Basin are likely to adversely affect the federally endangered Colorado pikeminnow, humpback chub, bonytail, razorback sucker and their designated critical habitat through multiple ecological stressors, such as habitat loss, competition from non-native fish, and degraded water quality. Because water depletions from the Upper Colorado River Basin are a major factor in the decline of the endangered fishes, the Service has historically determined that any depletion will jeopardize their continued existence and will likely contribute to the destruction or adverse modification of their critical habitat.

Based on the information in your letter, we cannot determine if the project will require formal consultation as described in section 7 of the ESA. Attached is some information that will be useful in providing us with the required additional information and will aid the Utah DNR and the Service's Wildlife and Sport Fish Restoration (WSFR) office to determine the appropriate level of NEPA analysis.

### Conclusion

While our Ecological Services Field Office does not determine whether this Project will qualify as a categorical exclusion, based on information from your request we have not identified any specific issues that give us concern relative to bald eagle or greater sage-grouse.

We recommend that you continue to work with the Service's WSFR office to make this determination. However with regards to the endangered Colorado River fishes and their designated critical habitat listed under the ESA we request additional information before we can determine if initiation of ESA section 7 consultation is appropriate. If so, we will coordinate with you and the WSFR office to conduct an Intra-Service section 7 consultation.

These findings are based on our understanding of the nature of the Project, local conditions, and/or current information indicating that no listed species are present. Should the nature of your project change, you may need to contact us for additional information. We appreciate your commitment to the conservation of endangered species. If you require further assistance or have any questions, please feel free to contact me at (801) 975-3330 extension 144.

Thanks

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